

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to five-year review of rules  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 3, “Department Procedure for Rule Making,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 to 17A.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 17A.3.

*Purpose and Summary*

This rule making is proposed as part of the Department’s five-year rules review process. This rule making updates information on the current rule-making process, including contact information and electronic availability of rule-making documents. Means of distribution of rule-making documents are changed to reflect the current process of electronic availability instead of distributing documents by mail. Information in the rules that duplicates information already dictated in the Iowa Code and other administrative rules is removed. No changes to the Department’s rule-making process are made in this rule making.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 12, 2022. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

## Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rules 441—3.3(17A) to 441—3.6(17A) as follows:

#### **441—3.3(17A) Public rule-making docket.**

~~3.3(1) Docket maintained.~~ The department shall ~~maintain a current public rule-making docket~~ utilize the electronic public rule-making docket provided by the office of the chief information officer.

~~3.3(2) Anticipated rule-making.~~ Rescinded IAB 3/6/02, effective 5/1/02.

~~3.3(3) Pending rule-making proceedings.~~ The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

~~a. The subject matter of the proposed rule.~~

~~b. A citation to all published notices relating to the proceeding.~~

~~c. Where written submissions on the proposed rule may be inspected.~~

~~d. The time during which written submissions may be made.~~

~~e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.~~

~~f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.~~

~~g. The current status of the proposed rule and any department determinations with respect thereto.~~

~~h. Any known timetable for department decisions or other action in the proceeding.~~

~~i. The date of the rule’s adoption.~~

~~j. The date of the rule’s filing, indexing, and publication.~~

~~k. The date on which the rule will become effective.~~

~~l. Where the rule-making record may be inspected.~~

#### **441—3.4(17A) Notice of proposed rule making.**

**3.4(1)** No change.

~~3.4(2) Copies of notices by mail.~~ Persons desiring to receive copies of future Notices of Intended Action by subscription shall complete Form 470-2250, Notice Subscription, which is available from the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, indicating the name and address to which the notices shall be sent. Persons may subscribe to all notices of the department, or only to notices pertaining to the service, income maintenance, or medical programs. Within seven days after submission of a Notice

~~of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail a copy of the notice to subscribers who have completed Form 470-2250 and paid the subscription price. The subscription price includes the cost of labor and supplies for copying and mailing of the notices. At the end of each calendar year, subscribers will be sent Form 470-2250 to complete if they wish to continue on the mailing list. All Notices of Intended Action are published on the legislative services agency website and are available for download at [www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings](http://www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings).~~

~~3.4(3) *Subscription to Web site.* Persons desiring to receive a weekly memo via E-mail listing new rules under proposal by the department shall go to the department's Web site at <http://www.dhs.state.ia.us/policyanalysis/> to subscribe or E-mail the department's rules administrator at [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us) indicating the E-mail address to which the memo shall be sent. This service shall be available without charge.~~

#### **441—3.5(17A) Public participation.**

**3.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the ~~Office~~ Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or to the department's rules administrator at [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us) [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us). Persons may also submit written comments on a Notice of Intended Action at the website [rules.iowa.gov](http://rules.iowa.gov), which lists all Notices of Intended Action that are open for public comment.

**3.5(2) *Oral proceedings.*** The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

~~Oral proceedings scheduled by the department regarding rules directly affecting indigent clients shall be held in each of the service areas defined in rule 441—1.4(17A).~~

~~In the case of rules not directly affecting indigent clients, the~~ The department shall determine for each rule for which oral proceedings are scheduled whether it will be necessary to hold presentations in all eight locations the number of locations at which hearings will be held throughout the state, if needed. Anyone may object to the department's decision prior to the date of the proceedings by writing the same addressee specified in the Notice of Intended Action for receiving written data, views, or arguments. The department shall review the adequacy of the number of locations in light of the comments received.

**3.5(3) and 3.5(4)** No change.

**3.5(5) *Accessibility.*** The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the ~~office of policy analysis at (515)281-8440~~ Bureau of Policy Analysis, Department of Human Services, at [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us) in advance to arrange access or other needed services.

#### **441—3.6(17A) Regulatory analysis.**

**3.6(1) *Definition of small business.*** A “small business” is defined in Iowa Code section 17A.4A(7).

~~**3.6(2) *Distribution list.***~~ Small businesses or organizations of small businesses may be registered on the department’s small business impact list by making a written application addressed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114. The application for registration shall state:

- ~~a. The name of the small business or organization of small businesses;~~
- ~~b. Its address;~~
- ~~c. The name of a person authorized to transact business for the applicant;~~
- ~~d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.~~
- ~~e. Whether the registrant desires copies of Notices of Intended Action at cost or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.~~

~~The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.~~

~~**3.6(3) *Time of distribution.***~~ Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

~~**3.6(4) 3.6(2) *Qualified requestors for regulatory analysis—economic impact.***~~ The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “a” after a proper request from:

- ~~a. The administrative rules coordinator.~~
- ~~b. The administrative rules review committee.~~

~~**3.6(5) 3.6(3) *Qualified requestors for regulatory analysis—business impact.***~~ The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “b” after a proper request from:

- ~~a. The administrative rules review committee.~~
- ~~b. The administrative rules coordinator.~~
- ~~c. At least 25 or more persons who sign the request provided that each represents a different small business.~~
- ~~d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.~~

~~**3.6(6) 3.6(4) *Time period for analysis.***~~ Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

~~**3.6(7) 3.6(5) *Contents of request.***~~ A request for a regulatory analysis is made when it is mailed, emailed, or delivered to the department. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

~~**3.6(8) 3.6(6) *Contents of concise summary.***~~ The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and (5).

~~**3.6(9) 3.6(7) *Publication of a concise summary.***~~ The department shall make available to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5) on the department’s website.

~~**3.6(10) 3.6(8) *Regulatory analysis contents—rules review committee or rules coordinator.***~~ When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the

requirements of Iowa Code section 17A.4A(2) “a,” unless a written request expressly waives one or more of the items listed therein.

~~3.6(11)~~ **3.6(9)** *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

ITEM 2. Rescind rule ~~441—3.10(17A)~~.

ITEM 3. Renumber rules ~~441—3.11(17A)~~ to ~~441—3.16(17A)~~ as ~~441—3.10(17A)~~ to ~~441—3.15(17A)~~.

ITEM 4. Amend renumbered rules ~~441—3.10(17A)~~ to ~~441—3.12(17A)~~ as follows:

**441—3.10(17A) Concise statement of reasons.**

**3.10(1)** *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Office Bureau of Policy Analysis, Department of Human Services, Fifth Floor, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114. Requests may also be sent via email to [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

**3.10(2)** and **3.10(3)** No change.

**441—3.11(17A) Contents, style, and form of rule.**

~~3.11(1)~~ *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

- ~~a.~~ The date the department adopted the rule;
- ~~b.~~ A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(1) “b,” or the department in its discretion decides to include the reasons;
- ~~c.~~ A reference to all rules repealed, amended, or suspended by the rule;
- ~~d.~~ A reference to the specific statutory or other authority authorizing adoption of the rule;
- ~~e.~~ Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- ~~f.~~ A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(1) “b,” or the department in its discretion decides to include the reasons; and
- ~~g.~~ The effective date of the rule.

~~3.11(2)~~ *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the State Law Library.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

~~3.11(3) *Style and form.*~~ In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**441—3.12(17A) Department rule-making record.**

~~3.12(1) *Requirement.*~~ The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection. The legislative services agency maintains an official rule-making record of each rule the department proposes or adopts on the legislative services agency website at [www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings](http://www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings).

~~3.12(2) *Contents.*~~ The department rule-making record shall contain:

~~a.~~ Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

~~b.~~ Copies of Form 470-0096, Rule Log, containing dates of actions and Iowa Administrative Bulletin references relating to the rule or the proceeding upon which the rule is based;

~~c.~~ All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered by the council of human services, mental health and developmental disabilities commission, or HAWK-I board in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;

~~d.~~ Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

~~e.~~ A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

~~f.~~ A copy of the rule and any concise statement of reasons prepared for that rule;

~~g.~~ All petitions for amendment or repeal or suspension of the rule;

~~h.~~ A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

~~i.~~ A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any department response to that objection;

~~j.~~ A copy of any significant written criticism of the rule, including a summary of any requests for an exception to policy for the rule; and

~~k.~~ A copy of any executive order concerning the rule.

~~3.12(3) *Effect of record.*~~ Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

~~3.12(4) *Maintenance of record.*~~ The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.